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THOMAS FERNANDEZ, et al.,

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

Plaintiff(s),) No. C06-7339 SBA (BZ)

v.) AMENDED ORDER FOLLOWING IN CAMERA REVIEW OF DOCUMENTS

K-M INDUSTRIES HOLDING CO.,) et al.,) Defendant(s).

Following yesterday's hearing, the court re-read the disputed documents in camera. IT IS ORDERED as follows:

- 1. The K-M defendants shall produce to plaintiffs the documents which they voluntarily agreed to produce at yesterday's hearing.
- 2. The K-M defendants shall also produce to plaintiffs the following documents:
 - (1) The portion of document no. 164, part 3, that begins with the language "Th[sic] Trustee is requesting" to the end of section 3 and the portion of section 5 on the last page beginning with the words "The Trustee has asked whether the company" through the sentence that ends "distributed to the participants."

- (2) That portion of document no. 203, beginning with the words "At the same director's meeting" and ending with the words "Trustee's request for payment of fees" in the next sentence.
- 3. The court finds that all the other disputed documents are protected by the attorney-client privilege or the work product doctrine and are not subject to the fiduciary exception as articulated in <u>United States v. Mett</u>, 178 F.3d 1058 (9th Cir. 1999) and <u>Fischel v. Equitable Life Insurance</u>, 191 F.R.D. 606 (N.D. Ca. 2000). Nor was there a waiver when these documents were shared by counsel for the company and counsel for the Moores, given their common interest in the subject matter of the documents.
- 4. Defendants' Production of Documents in Response to the Court's Order shall be filed by the Clerk under seal.

DATED: March 7, 2008

Bernard/Zimmerman

United States Magistrate Judge